

# California Court of Appeal Clarifies Breach of Warranty Law in Class Actions and Vacates Order Certifying Class of Consumers in *American Honda Motor Company, Inc. v. Superior Court*

**December 9, 2011 by *Judy Suwatanapongched***

In *American Honda Motor Company, Inc. v. Superior Court of Los Angeles County*, 199 Cal. App. 4th 1367 (2011), the California Court of Appeal for the Second Appellate District clarified that, under California law, a party moving for class certification in a breach of warranty action must provide “substantial evidence of a defect that is substantially certain to result in malfunction during the useful life of the product.” *American Honda Motor Co., Inc.*, 199 Cal. App. 4th at 1375.

Plaintiff Jin Hyeong Lee purchased a new Acura RSX with a six-speed manual transmission from Defendant American Honda Motor Company, Inc. (“Honda”). *Id.* at 1369. The standard manufacturer’s four-year warranty certified that Honda would replace any parts defective in material or workmanship under normal use. *Id.* The plaintiff experienced problems with the transmission within the warranty period when the car would pop out of third gear while it was running, but Honda technicians told him that the car was operating as designed. *Id.* Honda issued a service update to its dealers and a technical service bulletin (“TSB”) about this issue, advising Honda technicians on how to address the problem, such as replacing the third gear set. *Id.* at 1369-70.

The plaintiff brought a class action suit against Honda, alleging breach of warranty and unfair business practices under the UCL. *Id.* at 1370. The trial court granted the plaintiff's motion to certify a class of all individuals in California who purchased or leased the Acura models described in Honda's TSB, but whose third gear set was not replaced by Honda. *Id.* Honda filed a petition for writ of mandate. *Id.*

The Court of Appeal granted Honda's petition, holding that the trial court abused its discretion when it certified the plaintiff's proposed class because it relied almost exclusively on a Ninth Circuit opinion, *Wolin v. Jaguar Land Rover North America, LLC*, 617 F.3d 1168 (9th Cir. 2010), without properly applying California law. *Id.* at 1375. Although *Wolin* correctly stands for the proposition that proof of manifestation of a defect is not a prerequisite to class certification in a breach of warranty case, the analysis under California law does not end there. *Id.* at 1375. Rather, under *Hicks v. Kaufman & Broad Home Corporation*, 89 Cal. App. 4th 908 (2001), the plaintiff must still provide proof that "an inherent defect exists which is substantially certain to result in malfunction during the useful life of the product." *Id.* at 1373. Because the trial court did not follow *Hicks* and based its ruling on the erroneous legal assumption that *Wolin* alone was the law, the Court of Appeal reversed the class certification order. *Id.* at 1376.

In addition, the Court of Appeal held that the plaintiff's breach of warranty claims were not amenable to class treatment as the class was currently defined because the plaintiff's own evidence showed that, of the vehicles in question, less than four percent reported warranty claims for third gear problems, and, of that number, many had received a new third gear. *Id.* at 1377. Several other individualized issues persisted, including whether the warranty had expired or whether the alleged defect caused the problems. *Id.* at 1378. Notably, the Court of Appeal held that a TSB is not and cannot be fairly construed by a trial court as an admission of a design or other defect. *Id.*

Lastly, as to the plaintiff's UCL cause of action, the Court of Appeal held it was not subject to common proof because the plaintiff did not allege that Honda or its dealers made standard or scripted representations to class members. *Id.* at 1379. Rather, the plaintiff's own evidence showed how variable the representations could be and that, since many of the class members never even reported third gear problems, many class members were undisputedly never exposed to the alleged misrepresentations about a third gear problem. *Id.*